Folklife, 1968-74. Dr. Yoder has served as consultant in folklife studies to the Smithsonian Institution since 1973.

SUNSHINE BILL REVISED TO MEET AGENCY OBJECTIONS

(Mr. FASCELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FASCELL. Mr. Speaker, the House is scheduled to take up the "Government in the Sunshine" bill, H.R. 11656, next week.

In view of the importance of this legislation, I would like to review briefly the steps taken to assure that the bill is workable and fair from the standpoint of the governmental agencies affected by its provisions.

First, it should be pointed out that Congress has considered such legislation for more than 5 years. The first House bill, H.R. 16450, was introduced in 1972. The measure was reintroduced in the 93d Congress with almost 50 sponsors. In the present Congress there are 85 cosponsors.

Hearings have been held in both the House and Senate over a span of the last two Congresses. The bill itself stems from extensive work done by the American Bar Association and the Administrative Conference of the United States. Exhaustive efforts have been made to secure the views and recommendations of some 50 agencies in developing the specific language.

At each stage of congressional consideration of this bill, important revisions have been made in order to accommodate the concerns of the agencies involved. Other changes have been made on the initiative of Members of Congress. Still other amendments were considered and voted on, but not accepted.

As a result of these years of effort, H.R. 11656 meets the legitimate concerns of Federal agencies and carefully balances their administrative needs against the public need for full information. Any further amendments to weaken the bill would distort this balance in favor of the agencies and against the public.

To show the extent to which the agencies have been accommodated, I would like to list some of the major amendments approved as a result of agency requests.

On November 6 and 12, 1975, the Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations held hearings on H.R. 10315 and H.R. 9868, Government in the sunshine legislation. H.R. 9868 is identical to S. 5—as reported in the Senate—which, with two major changes, passed the Senate 94 to 0 on November 6. H.R. 10315 is almost identical to H.R. 9868, but included a number of changes, mostly of a technical and clarifying nature. A number of the changes between H.R. 9868 and H.R. 10315 were made to accommodate agency objections:

First. The exemption regarding premature disclosure of information, as set forth in H.R. 9868, permitted withholding of such material only if its release "would" have certain undesirable effects. In H.R. 10315, the agency may withhold such material if its disclosure "is likely" to have such effects.

Second. Under H.R. 9868, an agency was required to release all of a transcript of a closed meeting if "no significant portion" of the transcript contained exempt material. H.R. 10315 permits the deletion of exempt material from the transcript, no matter how insignificant a portion of the transcript that material represents.

In the light of agency testimony at the subcommittee hearings and written agency comments, H.R. 10315 was revised and introduced as a clean bill, H.R. 11007, on December 4, 1975. Among the many changes made to accommodate the agencies were the following:

Third. The SEC and other agencies had suggested that their right to withhold information if its "premature" disclosure would cause certain adverse effects might be interpreted to permit withholding only before the agency took the agency action to which the information related. They contended that certain information relevant to an agency action should be withheld even after the action had been concluded. Accordingly, the word "premature" was changed to permit withholding where disclosure would be "untimely."

Fourth. H.R. 11007 eliminates the requirement that a change in a previously announced meeting be published in the Federal Register.

Fifth. The judicial review provisions of H.R. 10315 prevent a court from setting aside or invalidating agency action because of a violation of the open meetings requirements of this legislation—when the court is acting solely under this act. At the request of the Department of Justice, the word "enjoin" was added to the list of acts forbidden to a court in such circumstances.

Sixth. At the request of the Administrative Conference of the United States, a provision in the section of the bill relating to ex parte communications was deleted. The conference was of the opinion that a provision of existing law forbidding agency decisionmaking personnel from communicating with their superiors in certain circumstances should not be disturbed, and H.R. 9868 would have removed most of that section.

Markup of H.R. 11007 began on December 15, 1975, continued on the 2 following days, and was concluded on January 20 and 21, 1976. At the request of Mr. MCCLOSKEY, a clean bill reflecting the subcommittee amendments was introduced (H.R. 11656) and was reported by the subcommittee on February 10. At the markup stage, too, numerous changes were made at the suggestion of executive agencies:

Seventh. At the request of the FTC and other agencies, the bill's exemption relating trade secrets was amended to track the language of exemption (4) of the Freedom of Information Act.

Eighth. At the request of the FTC and several other agencies, provisions suggesting that Government employees had fewer rights of privacy than the public at large were deleted.

Ninth. At the request of the SEC and OMB, an exemption permitting withholding of material if its disclosure would result in "serious" speculation was changed to apply to any "significant" speculation.

Tenth. A provision prohibiting withholding of information where the agency action to which it relates must be made public prior to the final decision of the agency was made inapplicable to instances involving possible speculation or possible adverse effect upon the stability of a financial institution. This change was at the request of the SEC and the Federal Reserve Board.

Eleventh. The FTC and the SEC contended that the exemption permitting the closing of meetings dealing with adjudicatory proceedings did not cover actions preparatory to such proceedings. Accordingly, the exemption—now numbered exemption 10—was amended to include discussions relating to the agency's issuance of a subpena.

Twelfth. OPIC, the Export-Import Bank, and the Office of Management wanted an exemption for discussions of proceedings in foreign courts and international tribunals, and arbitration proceedings. This change was made and appears in exemption 10.

Thirteenth. The provision in H.R. 11007 dealing with transcripts of closed meetings required that any deletion from a transcript be replaced by the reason and statutory basis for it and a summary or paraphrase of the material deleted. At the request of the Federal Reserve Board, the requirement for a summary or paraphrase was deleted.

Fourteenth. OMB raised the point that the judicial review provisions permitting a court challenge to an agency's regulations under this act had no statute of limitations on its face. Accordingly, the provision was amended to make applicable for such regulations the same statute of limitations applicable to regulations of agencies generally—there are different such statutes of limitations, but each agency has one that covers all of its rulemaking orders.

Fifteenth. OMB and other agencies claimed that the requirement that court actions be answered within 20 days was unduly burdensome, despite the fact that a single transcript is relatively easy to locate and analyze. Nevertheless, the provision was amended to permit the court to allow an additional 20 days in appropriate instances.

Sixteenth. It was argued that the provision permitting a court to release a transcript if it determined that a meeting had been unlawfully closed was not clear as to the release of exempt information contained within such a transcript. The bill was, therefore, amended to state that even if the transcript of an unlawfuly closed meeting is to be released, discrete portions within it that are themselves exempt may still be deleted.

Seventeenth. OMB contended that the bill was unclear as to whether the open meetings provisions cover those meetings that may also be covered under the Federal Advisory Committee Act (5 United States Code, Appendix I). Ac-

cordingly, a provision was added making this act applicable in cases of dual coverage.

After being reported by the full Committee on Government Operations, H.R. 11656 was sequentially referred to the Committee on the Judiciary. The bill was considered by the Subcommittee on Administrative Law and Governmental Relations during several days of markup and then by the full committee. A number of additional changes to accommodate administration suggestions were included in the bill as reported by the committee:

Eighteenth. The OMB was concerned that the bill did not contain an express standard of compliance with open meeting requirements. A new provision was added, therefore, specifically barring agency business other than in an open meeting as provided in the bill or in a closed portion authorized by the exceptions set forth in the bill.

Nineteenth. Since many statutes allow discretion in the withholding of information, the committee adopted the CIA's request that the words "or permitted" be added to the bill's provision allowing the withholding of information required to be withheld by statute.

Twentieth. A clarification sought by OMB and the Justice Department makes clear that the bill's exceptions to the open meeting requirements with respect to law enforcement information apply to information given orally as well as to written records.

Twenty-first. Another change made at the request of OMB makes it clear that the exception for information whose premature disclosure would lead to significant financial speculation or frustrate the implementation of a proposed agency action does not apply after notice of rulemaking has been given under section 553.

Twenty-second. OMB asked that agency heads not be required to vote on each transcript deletion. The requirement was dropped.

Twenty-third. Many agencies objected to the provision under which individual agency members could face legal action for acts in violation of the openness provisions, and these provisions were stricken. Actions could be brought only against an agency.

Twenty-fourth. Following Justice Department criticism of the bill's venue provisions, the measure was amended to require that challenges be brought in the district in which the agency meeting is held, or in the District of Columbia, or in the judicial district in which the agency has its headquarters. Previously, actions could have been brought in any judicial district.

Twenty-fifth. At the urging of the Justice Department and OMB, language was stricken which might have been construed to permit a court to invalidate an agency action because of a violation of the provisions of the bill, incident to a review of the merits. The Administrative Procedures Act already provides adequate authority for such reviews.

Twenty-sixth. Many agencies requested deletion of a provision permitting the assessment of attorneys' fees and costs against individual agency members in the event of legal actions brought under provisions of the bill, and the provision was dropped.

Twenty-seventh. A number of agencies also objected to the bill's provisions amending the Freedom of Information Act to limit the exception for information covered by statutes to only information covered by statutes which require that information of a particular type be withheld. An amendment was adopted which provides for an exception in the case of statutes which permit the agency to determine whether such information should be released or not.

SPAIN-UNITED STATES AGREEMENT ON TRANSMISSION FACILITIES FOR RADIO LIBERTY

(Mr. FASCELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FASCELL. Mr. Speaker, the Senate has not ratified the Treaty of Friendship and Cooperation with Spain, a treaty which involves numerous commitments—including financial commitments—over the next 5 years. We hope this treaty will lead to a broadening of the cooperation between Spain and the United States, even as Spain herself evolves into a more democratic society.

Members of this House have made clear that the obligations set forth in the treaty do not in any way supersede the normal congressional authorization and appropriation processes, and will be reviewed each year in the context of the congressional budget resolution.

I should like to note here that these annual authorizations will have to be viewed in the total context of United States-Spanish relations. This context, insofar as I am concerned, definitely includes the status of the Radio Liberty transmission facilities which have been leased from the Spanish Government since 1957. The lease expired in April, and the Board for International Broadcasting is seeking a long-term renewal; the site is ideal from the technical viewpoint, and relocation to a technically inferior site would cost upwards of $20 million.

In our report on the BIB authorization, the Committee on International Relations has stated our hope that—

Spain will continue to enable the United States to make use of the RL facilities as part of a common effort of the West to insure that the people of the Soviet Union continue to have access to information denied them by their own government.

The ratification of the Treaty of Friendship and Cooperation in no way diminishes—on the contrary, it intensifies—our interest in seeing a mutually satisfactory long-term agreement concluded for the renewal of the Radio Liberty transmitter lease.

I understand that negotiations on such a renewal will be resumed in Madrid at the end of this month, and I am pleased to learn that the administration fully supports the Board for International Broadcasting in its efforts to secure a long-term agreement. It is my hope that Spain and the United States will be able to complement the new treaty with a mutually satisfactory agreement to continue use of this facility by Radio Liberty.

RESTORING THE PARTNERSHIP

(Mr. WYLIE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. WYLIE. Mr. Speaker, recently Dr. Harold L. Enarson, president of the Ohio State University located in that part of Columbus, Ohio, in the 15th Congressional District presented to the Members of the Ohio Congressional Delegation a significant well-thought-out talk on "Restoring the Partnership." His genuine concern about the impact of big Federal Government on our Nation's colleges and universities deserves our attention because of his expertise and his position as the president of our largest university on one campus. I feel President Enarson's ideas deserve public dissemination and with this in mind, I insert President Enarson's remarks in the CONGRESSIONAL RECORD:

RESTORING THE PARTNERSHIP

(Excerpts from remarks by President Harold L. Enarson)

I welcome this opportunity to visit with you for a few minutes. Since there are 49,000 of your constituents getting their education at Ohio State, I think we have a mutual interest in getting better acquainted.

First I want to express my appreciation and that of the University for your continuing support. I know that we won't always agree on every issue. But I also know that the people of Ohio are proud of Ohio State, and I find that same kind of feeling reflected in our contacts with you and your staffs. Ohio State is a fine university. It serves all the state—every county and Congressional district. And we need to work together to keep it strong.

I am here out of a sense of urgency and concern to say a few frank words. If I have any message it is this:

A fundamental change is taking place in the relationship between Washington and the nation's colleges and universities, a change which I find deeply disturbing.

Once we were partners working together to solve national problems. Now we view each other with suspicion, almost as adversaries. We overregulate on one hand and overreact on the other. We have placed the partnership in peril. And if it is to be restored, it urgently needs our attention and understanding.

Neither higher education nor the federal government fully understands what is happening, in all its subtleties and side effects. Certainly we don't.

I had hoped to come before you with statistics honed to a sharp edge. If not that, at least some reasonably accurate picture of the total federal impact on Ohio State.

What folly. I soon discovered that our search for precision was an exercise in frustration. Yet the reality is undeniable: the federal presence is everywhere in the university.

As president of Ohio State, my position may be unique in that I can see on one campus the federal impact on public higher education in all its manifestations. This year one-eighth of our total budget ($43 million) will come from federal sources. And here is what I see which is so disturbing:

I see dollar costs—out-of-pocket expenses on a staggering scale.

I see debilitation—a draining away of time